

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2004 Regular Session of the General Assembly.

SENATE ENROLLED ACT No. 179

AN ACT to amend the Indiana Code concerning elections.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 3-13-4-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) **This section applies to a vacancy that occurs ~~other than by resignation~~, in a state office other than governor, lieutenant governor, or a judicial office.**

(b) If a state officer wants to resign from office, the state officer must resign as provided in IC 5-8-3.5.

(c) A vacancy that occurs in a state office because of the death of the state officer may be certified to the governor under IC 5-8-6.

(d) A vacancy that occurs in a state office other than by resignation or death shall be certified to the governor by the circuit court clerk of the county in which the officer resided.

~~(b)~~ **(e) The governor shall fill a vacancy in a state office ~~other than governor, lieutenant governor, or a judicial office~~ shall be filled by appointment. by The governor may not fill a vacancy as provided by law until the governor receives notice of the death under IC 5-8-6.**

(f) The person who is appointed by the governor holds office for the remainder of the unexpired term and until a successor is elected and qualified.

SECTION 2. IC 3-13-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. (a) A vacancy in a legislative office shall be filled by a caucus comprised of the precinct committeemen from the senate or house district where the vacancy

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exists who represent the same political party that elected or selected the person who held the vacated seat.

(b) Not later than thirty (30) days after the vacancy occurs (or as provided in ~~subsection (c))~~, **subsections (c) and (d))**, the caucus shall meet and select a person to fill the vacancy by a majority vote of those casting a vote for a candidate, including vice committeemen eligible to vote as a proxy under section 5 of this chapter.

(c) A state chairman may give notice of a caucus before the time specified under subsection (b) if a vacancy will exist because the official has:

- (1) submitted a written resignation under IC 5-8-3.5 that has not yet taken effect; or
- (2) been elected to another office.

(d) If a vacancy in a legislative office exists because of the death of the legislator, the caucus shall meet and select a person to fill the vacancy not later than thirty (30) days after the state chairman receives notice of the death of the legislator from the secretary of state under IC 5-8-6.

~~(d)~~ (e) Notwithstanding IC 5-8-4, a person may not withdraw the person's resignation after the resignation has been accepted by the person authorized to accept the resignation less than seventy-two (72) hours before the announced starting time of the caucus under this chapter.

~~(e)~~ (f) The person selected must reside in the district where the vacancy occurred.

SECTION 3. IC 3-13-5-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. **(a)** The state chairman of the political party that elected or selected the person who held the vacated seat shall set the place, date, and time of a caucus meeting. The chairman shall send a notice, by first class mail, of the purpose, place, date, and time of the meeting to all precinct committeemen in the caucus at least ten (10) days before the meeting.

(b) If a vacancy in a legislative office exists because of the death of the legislator, the state chairman may not send the notice required by subsection (a) until the state chairman receives notice of the death from the secretary of state under IC 5-8-6.

SECTION 4. IC 3-13-6-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. **(a) As used in this section, "judge" refers to a judge of a circuit, superior, probate, or county court.**

(b) If a judge wants to resign from office, the judge must resign as provided in IC 5-8-3.5.

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(c) A vacancy that occurs because of the death of a judge may be certified to the governor under IC 5-8-6.

~~(a)~~ **(d)** A vacancy that occurs, other than by resignation ~~in the office~~ **or death of a judge, of a circuit, superior, probate, or county court** shall be certified to the governor by the circuit court clerk of the county in which the judge resided.

~~(b)~~ **(e)** A vacancy in the office of judge of a circuit court shall be filled by the governor as provided by Article 5, Section 18 of the Constitution of the State of Indiana. **However, the governor may not fill a vacancy that occurs because of the death of a judge until the governor receives notice of the death under IC 5-8-6.** The person who is appointed holds the office until:

- (1) the end of the unexpired term; or
- (2) a successor is elected at the next general election and qualified;

whichever occurs first. The person elected at the general election following an appointment to fill the vacancy, upon being qualified, holds office for the six (6) year term prescribed by Article 7, Section 7 of the Constitution of the State of Indiana and until a successor is elected and qualified.

~~(c)~~ **(f)** A vacancy in the office of judge of a superior, probate, or county court shall be filled by the governor subject to the following:

- (1) IC 33-33-2-39.
- (2) IC 33-33-2-43.
- (3) IC 33-33-45-38.
- (4) IC 33-33-71-40.

However, the governor may not fill a vacancy that occurs because of the death of a judge until the governor receives notice of the death under IC 5-8-6. The person who is appointed holds office for the remainder of the unexpired term.

SECTION 5. IC 3-13-7-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) **This section applies to a vacancy in a county elected office (other than county council) not covered by section 1 of this chapter.**

(b) A vacancy shall be filled by the board of commissioners of the county at a regular or special meeting. The county auditor shall give notice of the meeting. ~~which~~ **Except as provided in subsection (d), the meeting shall be held within not later than thirty (30) days after the vacancy occurs. The notice must:**

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and

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(4) be sent by first class mail to each commissioner at least ten (10) days before the meeting.

~~(b)~~ (c) Selections made under this section (or under IC 3-2-10-3(a) before its repeal on March 4, 1986) are appointments pro tempore for the purposes of Article 2, Section 11 of the Constitution of the State of Indiana.

(d) If a vacancy occurs because of the death of an elected county officer, the board of commissioners shall meet and select an individual to fill the vacancy not later than thirty (30) days after the county auditor receives notice of the death under IC 5-8-6. The county auditor may not give the notice required under subsection (b) until the county auditor receives notice of the death under IC 5-8-6.

SECTION 6. IC 3-13-7-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. **(a) This section applies to a vacancy in a county council not covered by section 1 of this chapter.**

(b) A vacancy shall be filled by a majority of the remaining members of the council at a regular or special meeting. The county auditor shall give notice of the meeting. ~~which~~ **Except as provided in subsection (c), the meeting shall be held within not later than thirty (30) days after the vacancy occurs. The notice must:**

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

(c) If a vacancy occurs because of the death of a county council member, the county council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the county auditor receives notice of the death under IC 5-8-6. The county auditor may not give the notice required under subsection (b) until the county auditor receives notice of the death under IC 5-8-6.

SECTION 7. IC 3-13-8-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. **(a) As used in this section, "judge" refers to a judge of a city court.**

(b) If a judge wishes to resign from office, the judge must resign as provided in IC 5-8-3.5.

(c) A vacancy that occurs because of the death of a judge may be certified to the governor under IC 5-8-6.

~~(a)~~ **(d) A vacancy that occurs, other than by resignation in the office or death of a judge, of a city court shall be certified to the governor by the circuit court clerk of the county in which the judge resided.**

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~~(b)~~ (e) A vacancy in the office of judge of a city court shall be filled by the governor. **However, the governor may not fill a vacancy that occurs because of the death of a judge until the governor receives notice of the death under IC 5-8-6.**

SECTION 8. IC 3-13-8-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) **This section applies to a vacancy in the office of mayor of a first class city not covered by section 1 of this chapter.**

(b) The vacancy shall be filled by the city-county council at a regular or special meeting. The city clerk shall give notice of the meeting. ~~which~~ Except as provided in subsection (d), the meeting shall be held ~~within~~ not later than thirty (30) days after the vacancy occurs. The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

~~(b)~~ (c) The city clerk shall preside at the meeting but may not vote unless there is a tie vote among the members of the council. The council must appoint one (1) of its own members to the office. Until the vacancy is filled, the president of the council shall serve as acting mayor.

(d) If a vacancy exists because of the death of the mayor, the council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the city clerk receives notice of the death under IC 5-8-6. The city clerk may not give the notice required by subsection (b) until the city clerk receives notice of the death under IC 5-8-6.

SECTION 9. IC 3-13-8-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) **This section applies to a vacancy in the city-county council of a first class city not covered by section 1 of this chapter.**

(b) A vacancy shall be filled by a majority of the remaining members of the council at a regular or special meeting. The city clerk shall give notice of the meeting. ~~which~~ Except as provided in subsection (c), the meeting shall be held ~~within~~ not later than thirty (30) days after the vacancy occurs. The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten

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(10) days before the meeting.

(c) If a vacancy exists because of the death of a council member, the council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the city clerk receives notice of the death under IC 5-8-6. The city clerk may not give the notice required by subsection (b) until the city clerk receives notice of the death under IC 5-8-6.

~~(b)~~ **(d)** The appointed member serves until a successor is elected and qualified at the next municipal or general election, whichever occurs first. The successor serves from noon January 1 following that election to noon January 1 following the next municipal election, as provided in IC 36-3-4-2. The persons appointed and elected must be resident voters in the district where the vacancy occurred, unless the vacancy occurred in an at large seat.

SECTION 10. IC 3-13-8-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. (a) **This section applies to** a vacancy in the office of mayor of a second class city not covered by section 1 of this chapter.

(b) A vacancy shall be filled as follows:

- (1) If the city has a deputy mayor, the deputy mayor assumes the office for the remainder of the unexpired term.
- (2) If the city does not have a deputy mayor, the city controller assumes the office for the remainder of the unexpired term.
- (3) If the city does not have a deputy mayor and the office of city controller is vacant, the common council shall fill the vacancy at a regular or special meeting.

~~(b)~~ **(c)** The city clerk shall give notice of the meeting required under subsection ~~(a)(3)~~, ~~which (b)(3).~~ **Except as provided in subsection (d), the meeting shall be held within not later than thirty (30) days after the vacancy occurs. The notice must:**

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

(d) If a vacancy exists because of the death of the mayor, the council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the city clerk receives notice of the death under IC 5-8-6. The city clerk may not give the notice required by subsection (c) until the city clerk receives notice of the death under IC 5-8-6.

~~(c)~~ **(e)** Until the vacancy is filled, the council shall designate one (1)

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of its members to serve as acting mayor.

SECTION 11. IC 3-13-8-6 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 6. (a) **This section applies to** a vacancy in the office of city clerk of a second class city not covered by section 1 of this chapter.

(b) **A vacancy** shall be filled by the mayor or acting mayor, subject to the approval of the common council. **However, if a vacancy exists because of the death of the city clerk, the mayor or acting mayor may not fill the vacancy until the mayor or acting mayor receives notice of the death under IC 5-8-6.**

~~(b)~~ (c) The common council shall vote on the question of approving the mayor or acting mayor's appointment at a regular or special meeting. The president of the common council shall give notice of the meeting, which shall be held ~~within~~ **not later than** thirty (30) days after the appointment is made. The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

SECTION 12. IC 3-13-8-7 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 7. (a) **This section applies to** a vacancy in the common council of a second class city not covered by section 1 of this chapter.

(b) **A vacancy** shall be filled by the remaining members of the council at a regular or special meeting. The city clerk shall give notice of the meeting. ~~which~~ **Except as provided in subsection (c), the meeting shall be held within not later than** thirty (30) days after the vacancy occurs. The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

(c) **If a vacancy exists because of the death of a council member, the council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the city clerk receives notice of the death under IC 5-8-6. The city clerk may not give the notice required by subsection (b) until the city clerk receives notice of the death under IC 5-8-6.**

SECTION 13. IC 3-13-8-8 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 8. (a) **This section**

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applies to a vacancy in the office of mayor of a third class city not covered by section 1 of this chapter.

(b) A vacancy shall be filled as follows:

- (1) If the city has a deputy mayor, the deputy mayor assumes the office for the remainder of the unexpired term.
- (2) If the city does not have a deputy mayor, the common council shall fill the vacancy at a regular or special meeting.

~~(b)~~ **(c)** The city clerk-treasurer shall give notice of the meeting required under subsection ~~(a)(2)~~, **which (b)(2). Except as provided in subsection (d), the meeting shall be held within not later than thirty** (30) days after the vacancy occurs. The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

(d) If a vacancy exists because of the death of the mayor, the council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the city clerk-treasurer receives notice of the death by IC 5-8-6. The city clerk-treasurer may not give the notice required by subsection (c) until the city clerk-treasurer receives notice of the death under IC 5-8-6.

~~(c)~~ **(e)** Until the vacancy is filled, the council shall designate one (1) of its members to serve as acting mayor.

SECTION 14. IC 3-13-8-9 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 9. (a) **This section applies to** a vacancy in the office of city clerk-treasurer of a third class city not covered by section 1 of this chapter.

(b) The vacancy shall be filled by the mayor or acting mayor, subject to the approval of the common council. **However, if a vacancy exists because of the death of the city clerk-treasurer, the mayor or acting mayor may not fill the vacancy until the mayor or acting mayor receives notice of the death under IC 5-8-6.**

~~(b)~~ **(c)** The common council shall vote on the question of approving the mayor or acting mayor's appointment at a regular or special meeting. The mayor shall give notice of the meeting, which shall be held ~~within~~ **not later than** thirty (30) days after the appointment is made. The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten

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(10) days before the meeting.

SECTION 15. IC 3-13-8-10 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 10. (a) **This section applies to** a vacancy in the common council of a third class city not covered by section 1 of this chapter.

(b) A vacancy shall be filled by the remaining members of the council at a regular or special meeting. The city executive may break any tie vote.

~~(b)~~ **(c)** The city clerk-treasurer shall give notice of the meeting. ~~which~~ **Except as provided in subsection (d), the meeting** shall be held ~~within~~ **not later than** thirty (30) days after the vacancy occurs. The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

(d) If a vacancy exists because of the death of a council member, the council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the city clerk-treasurer receives notice of the death under IC 5-8-6. The city clerk-treasurer may not give the notice required by subsection (c) until the city clerk-treasurer receives notice of the death under IC 5-8-6.

SECTION 16. IC 3-13-9-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) **This section applies to** a vacancy in the office of judge of a town court that is:

- (1) not covered by section 1 of this chapter; or
- (2) covered by section 1 of this chapter, but ~~exists~~ **existing** after the thirtieth day after:

(A) the vacancy occurs, if IC 5-8-6 does not apply; or

(B) the town clerk-treasurer receives the notice required under IC 5-8-6.

(b) A vacancy shall be filled by the town council at a regular or special meeting.

~~(b)~~ **(c)** The town clerk-treasurer shall give notice of the meeting. ~~which~~ **Except as provided in subsections (e) and (f), the meeting** shall be held:

- (1) ~~within~~ **not later than** thirty (30) days after the vacancy occurs if the vacancy is not covered by section 1 of this chapter; or
- (2) ~~within~~ **not later than** sixty (60) days after the vacancy occurs if the vacancy **is covered by section 1 of this chapter and** exists

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for more than thirty (30) days.

~~(c)~~ (d) The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

(e) If a vacancy:

- (1) is not covered by section 1 of this chapter; and
- (2) exists because of the death of a judge;

the council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the town clerk-treasurer receives notice of the death under IC 5-8-6. The town clerk-treasurer may not give the notice required by subsection (c) until the town clerk-treasurer receives notice of the death under IC 5-8-6.

(f) If a vacancy:

- (1) is covered by section 1 of this chapter;
- (2) exists because of the death of a judge; and
- (3) exists for more than thirty (30) days;

the council shall meet and select an individual to fill the vacancy not later than sixty (60) days after the town clerk-treasurer receives notice of the death under IC 5-8-6. The town clerk-treasurer may not give the notice required by subsection (c) until the town clerk-treasurer receives notice of the death under IC 5-8-6.

SECTION 17. IC 3-13-9-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) **This section applies to** a vacancy in the office of town clerk-treasurer:

- (1) not covered by section 1 of this chapter; or
- (2) covered by section 1 of this chapter, but existing after the thirtieth day after:
 - (A) the vacancy occurs, **if IC 5-8-6 does not apply; or**
 - (B) **the president of the town council receives the notice required under IC 5-8-6.**

(b) **A vacancy** shall be filled by the town council at a regular or special meeting.

~~(b)~~ (c) The president of the town council shall give notice of the meeting. ~~which~~ **Except as provided in subsections (e) and (f), the meeting shall be held:**

- (1) ~~within~~ **not later than** thirty (30) days after the vacancy occurs if the vacancy is not covered by section 1 of this chapter; or

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(2) ~~within~~ **not later than** sixty (60) days after the vacancy occurs if the vacancy **is covered by section 1 of this chapter** and exists for more than thirty (30) days.

~~(c)~~ **(d)** The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

(e) If a vacancy:

(1) is not covered by section 1 of this chapter; and

(2) exists because of the death of the town clerk-treasurer;

the council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the president of the town council receives notice of the death under IC 5-8-6. The president of the town council may not give the notice required by subsection (c) until the president of the town council receives notice of the death under IC 5-8-6.

(f) If a vacancy:

(1) is covered by section 1 of this chapter;

(2) exists because of the death of the town clerk-treasurer; and

(3) exists for more than thirty (30) days;

the council shall meet and select an individual to fill the vacancy not later than sixty (60) days after the president of the town council receives notice of the death under IC 5-8-6. The president of the town council may not give the notice required by subsection (c) until the president of the town council receives notice of the death under IC 5-8-6.

SECTION 18. IC 3-13-9-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) **This section applies to** a vacancy in the town council:

- (1) not covered by section 1 of this chapter; or
- (2) covered by section 1 of this chapter, but existing after the thirtieth day after:

(A) the vacancy occurs, if IC 5-8-6 does not apply; or

(B) the town clerk-treasurer receives the notice required under IC 5-8-6.

(b) The vacancy shall be filled by the remaining members of the council at a regular or special meeting.

~~(b)~~ **(c)** The town clerk-treasurer shall give notice of the meeting. Except as provided in ~~subsection (d)~~ **or subsections (e), (f), (g), and**

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(h), the meeting shall be held:

- (1) ~~within not later than~~ thirty (30) days after the vacancy occurs if the vacancy is not covered by section 1 of this chapter; or
- (2) ~~within not later than~~ sixty (60) days after the vacancy occurs if the vacancy is covered by section 1 of this chapter and exists for more than thirty (30) days.

~~(c)~~ **(d)** The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each council member at least ten (10) days before the meeting.

~~(d)~~ **(e)** Notwithstanding subsection ~~(b)~~; **(e)** If a vacancy:

- (1) is not covered by **subsection (f) or** section 1 of this chapter; and
- (2) exists because a circumstance has occurred under ~~IC 36-5-2-6.5(2) through~~ IC 36-5-2-6.5(3);

the town council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the town council determines that a circumstance has occurred under ~~IC 36-5-2-6.5(2) through~~ IC 36-5-2-6.5(3).

(f) If a vacancy:

- (1) is not covered by subsection **(e)** or section 1 of this chapter; and
- (2) exists because a circumstance has occurred under IC 36-5-2-6.5(2);

the town council shall meet and select an individual to fill the vacancy not later than thirty (30) days after the town clerk-treasurer receives notice of the death under IC 5-8-6. The town clerk-treasurer may not give the notice required by subsection **(c)** until the town clerk-treasurer receives notice of the death under IC 5-8-6.

~~(e)~~ **(g)** Notwithstanding subsection ~~(b)~~; **(g)** If a vacancy:

- (1) is covered by section 1 of this chapter **and not covered by subsection (h)**;
- (2) exists because a circumstance has occurred under ~~IC 36-5-2-6.5(2) through~~ IC 36-5-2-6.5(3); and
- (3) exists for more than thirty (30) days;

the council shall meet and select an individual to fill the vacancy not later than sixty (60) days after the town council determines that a circumstance has occurred under ~~IC 36-5-2-6.5(2) through~~ IC 36-5-2-6.5(3).

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(h) If a vacancy:

- (1) is covered by section 1 of this chapter and not covered by subsection (g);**
- (2) exists because a circumstance has occurred under IC 36-5-2-6.5(2); and**
- (3) exists for more than thirty (30) days;**

the council shall meet and select an individual to fill the vacancy not later than sixty (60) days after the town clerk-treasurer receives notice of the death under IC 5-8-6. The town clerk-treasurer may not give the notice required by subsection (c) until the town clerk-treasurer receives notice of the death under IC 5-8-6.

SECTION 19. IC 3-13-10-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 2. (a) A vacancy in the office of township trustee:

- (1) not covered by section 1 of this chapter; or
- (2) covered by section 1 of this chapter, but that exists after the thirtieth day after:
 - (A) the vacancy occurs, if IC 5-8-6 does not apply; or**
 - (B) the county auditor receives the notice required under IC 5-8-6;**

shall be filled by the board of commissioners of the county at a regular or special meeting.

(b) The county auditor shall give notice of the meeting. ~~which~~

(c) Except as provided in subsections (e) and (f), the meeting shall be held within not later than:

- (1) thirty (30) days after the vacancy occurs, if the vacancy is not covered by section 1 of this chapter; or**
- (2) not later than sixty (60) days after the vacancy occurs, if the vacancy is covered by section 1 of this chapter and exists for more than thirty (30) days.**

(d) The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each commissioner at least ten (10) days before the meeting.

(e) If the vacancy:

- (1) is not covered by section 1 of this chapter; and**
- (2) exists because of the death of the township trustee;**

the meeting required by subsection (c) shall be held not later than thirty (30) days after the county auditor receives notice of the

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death under IC 5-8-6. The county auditor may not give the notice required by subsection (b) until the county auditor receives notice of the death under IC 5-8-6.

(f) If the vacancy:

- (1) is covered by section 1 of this chapter;
- (2) exists because of the death of the township trustee; and
- (3) exists for more than thirty (30) days;

the meeting required under subsection (c) shall be held not later than sixty (60) days after the county auditor receives notice of the death under IC 5-8-6. The county auditor may not give the notice required by subsection (b) until the county auditor receives notice of the death under IC 5-8-6.

SECTION 20. IC 3-13-10-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) **This section applies to** a vacancy in the office of township assessor not covered by section 1 of this chapter.

(b) **A vacancy** shall be filled by the county assessor, subject to the approval of the department of local government finance. **Except as provided in subsection (c),** the county assessor shall make the appointment ~~within~~ **not later than** thirty (30) days after the vacancy occurs. If the vacancy occurred because the elected township assessor failed to qualify or was removed, the person who is appointed must be of the same political party as the elected township assessor.

(c) **If a vacancy exists because of the death of the township assessor, the county assessor shall make the appointment required by subsection (b) not later than thirty (30) days after the county assessor receives notice of the death under IC 5-8-6. The county assessor may not fill the vacancy as required by subsection (b) until the county assessor receives notice of the death under IC 5-8-6.**

SECTION 21. IC 3-13-10-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) A vacancy on the township board of a township:

- (1) not covered by section 1 of this chapter; or
- (2) covered by section 1 of this chapter, but that exists after the thirtieth day after:

(A) the vacancy occurs, **if IC 5-8-6 does not apply; or**

(B) **the county auditor receives the notice required under IC 5-8-6;**

shall be filled by the board of commissioners of the county at a regular or special meeting.

(b) The county auditor shall give notice of the meeting. ~~which~~

(c) **Except as provided in subsections (e) and (f), the meeting**

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shall be held: ~~within~~

- (1) not later than thirty (30) days after the vacancy occurs, if the vacancy is not covered by section 1 of this chapter; or**
- (2) not later than sixty (60) days after the vacancy occurs, if the vacancy is covered by section 1 of this chapter and exists for more than thirty (30) days.**

(d) The notice must:

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and
- (4) be sent by first class mail to each commissioner at least ten (10) days before the meeting.

(e) If a vacancy:

- (1) is not covered by section 1 of this chapter; and**
 - (2) exists because of the death of a township board member;**
- the meeting required by subsection (c) shall be held not later than thirty (30) days after the county auditor receives notice of the death under IC 5-8-6. The county auditor may not give the notice required under subsection (b) until the county auditor receives notice of the death under IC 5-8-6.**

(f) If a vacancy:

- (1) is covered by section 1 of this chapter;**
 - (2) exists because of the death of a township board member; and**
 - (3) exists for more than thirty (30) days;**
- the meeting required by subsection (c) shall be held not later than sixty (60) days after the county auditor receives notice of the death under IC 5-8-6. The county auditor may not give the notice required by subsection (b) until the county auditor receives notice of the death under IC 5-8-6.**

SECTION 22. IC 3-13-10-5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 5. **(a) This section applies to** a vacancy in the office of judge of a small claims court or small claims court constable not covered by section 1 of this chapter.

(b) A vacancy shall be filled by the township board at a regular or special meeting. The chairman of the township board shall give notice of the meeting. ~~which~~ **Except as provided in subsection (c), the meeting shall be held within not later than thirty (30) days after the vacancy occurs. The notice must:**

- (1) be in writing;
- (2) state the purpose of the meeting;
- (3) state the date, time, and place of the meeting; and

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(4) be sent by first class mail to each board member at least ten (10) days before the meeting.

(c) If a vacancy exists because of the death of a judicial officer, the meeting required by subsection (b) shall be held not later than thirty (30) days after the chairman of the township board receives notice of the death under IC 5-8-6. The chairman of the township board may not give the notice required by subsection (b) until the chairman of the township board receives notice of the death under IC 5-8-6.

SECTION 23. IC 3-13-11-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) Except as provided in ~~subsection~~ **subsections (b) and (e)** and section 3.5 of this chapter, not later than ten (10) days after a vacancy occurs in an office subject to this chapter, the county chairman:

- (1) of the county in which the greatest percentage of the population of the election district of the office is located; and
- (2) of the same political party that elected or selected the official who vacated the office;

shall give notice of a caucus to all eligible precinct committeemen.

(b) A county chairman may give notice of a caucus before the time specified under subsection (a) if a vacancy will exist because the official has:

- (1) submitted a written resignation under IC 5-8-3.5; or
- (2) been elected to another office.

(c) Notwithstanding IC 5-8-4, a person may not withdraw the person's resignation after the resignation has been accepted by the person authorized to accept the resignation less than seventy-two (72) hours before the announced starting time of a caucus under this section.

(d) Except as provided in **subsection (e) and** section 3.5 of this chapter, a caucus under this section shall be held after giving notice to caucus members under section 4 of this chapter and not later than thirty (30) days after the vacancy occurs.

(e) If a vacancy exists in an office because a circumstance has occurred under IC 36-5-2-6.5(2), the caucus shall meet and select an individual to fill the vacancy not later than thirty (30) days after the county chairman receives notice of the death under IC 5-8-6. The county chairman shall give notice to caucus members under section 4 of this chapter. The county chairman may not give the notice required by section 4 of this chapter until the county chairman receives notice of the death under IC 5-8-6.

SECTION 24. IC 3-13-11-3.5 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3.5. (a) If a vacancy

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exists on a town council because a circumstance has occurred under ~~IC 36-5-2-6.5(2)~~ through IC 36-5-2-6.5(3), the caucus shall meet and select an individual to fill the vacancy not later than thirty (30) days after the county chairman receives a notice of the vacancy under IC 5-8-5. ~~If the vacancy is due to the death of a town council member and the county chairman is aware of the member's death before receiving a notice of the death, the caucus may meet before the county chairman receives the notice of the death.~~

(b) The county chairman shall:

- (1) give notice of the caucus meeting to caucus members under section 4 of this chapter; and
- (2) keep the notice of the vacancy with the records of the caucus.

SECTION 25. IC 5-8-1-37 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 37. (a) As used in this section:

(1) "Felony" means any crime punishable by imprisonment for more than one (1) year in any correctional facility.

(2) "Public officer" means any person, elected or appointed, who holds any state, county, township, city, or town office.

(b) Any public officer convicted of a felony during ~~his~~ **the officer's** term of office shall:

- (1) be removed from office by operation of law when ~~he~~ **the officer** is sentenced for the felony; and
- (2) not receive any salary or remuneration from the time ~~he~~ **the officer** is sentenced for the felony.

(c) If the conviction is reversed, vacated, or set aside, and the officer's term has not expired, the officer shall:

- (1) be reinstated in office; and
- (2) receive any salary or other remuneration which ~~he~~ **the officer** would have received had ~~he~~ **the officer** not been removed from office.

(d) If the conviction is reversed, vacated, or set aside, and the officer's term has expired, ~~he~~ **the officer** shall receive any salary or other remuneration which ~~he~~ **the officer** would have received had he not been removed from office.

(e) Every vacancy in a public office caused by the removal of a public officer under this section shall be filled as provided by law. If a convicted public officer is reinstated, the person filling the office during the appeal shall cease to hold the office.

(f) This subsection applies whenever:

- (1) the court imposes on a public officer a sentence for a felony, as referred to in subsection (b); and**

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(2) a vacancy occurs in a state, county, township, city, or town office as the result of the court's sentence.

The court must file a certified copy of the sentencing order with the person who is entitled under IC 5-8-6 to receive notice of the death of an individual holding the office. The person receiving a copy of the sentencing order must give notice of the vacancy in the same manner as if the person had received a notice under IC 5-8-6. The person who is required or permitted to fill the vacancy must comply with IC 3-13.

(g) This subsection applies if a public officer is reinstated in office under subsection (c). The court must file a certified copy of the order reversing, vacating, or setting aside the conviction with the person who is entitled under IC 5-8-6 to receive notice of the death of an individual holding the office. The person receiving a copy of the order must give notice of the reinstatement in the same manner as notice of a vacancy would be given under IC 5-8-6. In addition, the person receiving a copy of the order must also give notice to the person who was selected to fill the vacancy before the reinstatement occurred.

SECTION 26. IC 5-8-5-1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1. This chapter applies when a vacancy must be filled under:

- (1) IC 3-13-9; or
- (2) IC 3-13-11;

due to a reason set forth in ~~IC 36-5-2-6.5(2)~~ through IC 36-5-2-6.5(3).

SECTION 27. IC 5-8-5-3 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3. (a) The town council may hold a public meeting to determine whether a circumstance has occurred under ~~IC 36-5-2-6.5(2)~~ through IC 36-5-2-6.5(3) that results in a vacancy on the town council. The town council may set a meeting for making the determination on its own motion, or a person may petition the town council to set a meeting to make the determination. The town council may grant or deny a petition for a meeting.

(b) If a person files a petition with the council, the petition must state the basis for the person's claim that a circumstance has occurred under ~~IC 36-5-2-6.5(2)~~ through IC 36-5-2-6.5(3).

SECTION 28. IC 5-8-5-4 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 4. (a) If the town council is reasonably satisfied that any circumstance has occurred under ~~IC 36-5-2-6.5(2)~~ through IC 36-5-2-6.5(3), the council may, by an affirmative vote of a majority of the members appointed to the body, vote to declare a vacancy in the town council membership. The

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member who is alleged to have vacated the member's seat may participate in the meeting as a member, but may not vote on the issue.

(b) If the member who is the subject of the petition or motion does not attend the meeting at which the town council makes the determination that a vacancy exists, the town council shall mail notice of its determination to the member.

(c) If the town council determines that a vacancy exists, the town clerk-treasurer shall give the circuit court clerk notice of the determination not later than five (5) days after the date of the town council's determination. The circuit court clerk shall give notice to the county chairman if a caucus is required under IC 3-13-11 to fill the vacancy.

SECTION 29. IC 5-8-6 IS ADDED TO THE INDIANA CODE AS A NEW CHAPTER TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]:

Chapter 6. Notice of Death of an Officeholder

Sec. 1. This chapter applies when a vacancy must be filled under:

- (1) IC 3-13-4;
- (2) IC 3-13-5;
- (3) IC 3-13-6;
- (4) IC 3-13-7;
- (5) IC 3-13-8;
- (6) IC 3-13-9;
- (7) IC 3-13-10;
- (8) IC 3-13-11; or
- (9) IC 20;

due to the death of an officeholder.

Sec. 2. As used in this chapter, "officeholder" refers to a person who holds a state office, legislative office, local office, or school board office (as those terms are defined in IC 3-5-2).

Sec. 3. (a) A person who knows of the death of an officeholder may certify the death to the following:

- (1) The governor, in the case of the death of any of the following:
 - (A) An individual who holds a state office (as defined in IC 3-5-2-48).
 - (B) An individual who is a judge of a circuit, superior, probate, county, or city court.
- (2) The secretary of state, in the case of the death of an individual who holds a legislative office (as defined in IC-3-5-2-28).

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(3) The circuit court clerk of the county in which the officeholder resided, in the case of the death of an officeholder of a county, city, town, township, or school corporation not covered under subdivision (1).

(b) A person who certifies the death of an officeholder shall:

- (1) state the information that causes the person to believe the officeholder has died; and
- (2) certify, under the penalties for perjury, that to the best of the person's knowledge and belief, the information stated is true.

Sec. 4. When the governor:

- (1) obtains information concerning the death of an individual who:
 - (A) holds a state office (as defined in IC 3-5-2-48); or
 - (B) is a judge of a circuit, superior, probate, county, or city court; and
- (2) is reasonably satisfied that the information described in subdivision (1) is true;

the governor shall fill the vacancy as provided by law.

Sec. 5. (a) When the secretary of state:

- (1) obtains information concerning the death of an individual who holds a legislative office (as defined in IC 3-5-2-28); and
- (2) is reasonably satisfied that the information described in subdivision (1) is true;

the secretary of state shall give notice of the death to the state chairman of the political party that elected or selected the deceased individual.

(b) The secretary of state shall give the notice required by subsection (a) not later than seventy-two (72) hours after the requirements of subsection (a)(1) and (a)(2) are satisfied.

Sec. 6. (a) When a circuit court clerk:

- (1) obtains information concerning the death of an officeholder of a county, city, town, township, or school corporation not subject to section 4 of this chapter; and
- (2) is reasonably satisfied that the information described in subdivision (1) is true;

the circuit court clerk shall give notice of the death to the person described in subsection (b).

(b) The circuit court clerk shall give the notice required by subsection (a) to:

- (1) the person who must give notice of any meeting or caucus required to fill the vacancy caused by the death; or

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(2) if a meeting or caucus is not required to fill the vacancy, the person who has the power to fill the vacancy.

(c) The circuit court clerk shall give the notice required by subsection (a) not later than seventy-two (72) hours after the requirements of subsection (a)(1) and (a)(2) are satisfied.

SECTION 30. IC 20-3-11-3.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 3.1. (a) The board of school commissioners consists of seven (7) members. Each member shall be elected on a nonpartisan basis in primary elections held in the county as specified in this section. Five (5) of the members shall be elected from the school board districts in which they reside and two (2) members shall be elected at large. Not more than two (2) of the members who serve on the board may reside in the same school board district. When a candidate runs for one (1) of the district positions on the board, only eligible voters residing in the candidate's district may vote for that candidate. When a person is a candidate for one (1) of the at-large positions, eligible voters from all the districts may vote for that candidate. When a candidate files to run for a position on the board, the candidate must specify whether the candidate is running for a district or an at-large position. All members elected to the board serve four (4) year terms. A candidate who runs for a district or an at-large position wins if the candidate receives the greatest number of votes of all the candidates against whom the candidate runs. Districts shall be established within the school corporation by the state board of education. The districts shall be drawn on the basis of precinct lines and as nearly as practicable, of equal population with the population of the largest not to exceed the population of the smallest by more than five percent (5%). District lines must not cross precinct lines. The state board of education shall establish balloting procedures for the election under IC 3 and other procedures required to implement this section.

(b) Each member of the board of school commissioners serves under section 2 of this chapter. **In accordance with subsection (e),** the vacancies in the board of school commissioners shall be filled temporarily by the school board as soon as practicable after the vacancy occurs. The member chosen by the board to fill a vacancy holds office until the member's successor is elected and qualified. The successor shall be elected at the next regular school board election occurring after the date on which the vacancy occurs, at which time the vacancy shall be filled for the remainder of the term.

(c) Persons elected to serve on the board begin their terms on July 1 of the year of their election.

(d) Notwithstanding any law to the contrary, voters shall cast their

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votes for school board candidates by voting system or paper ballot. However, the same method used to cast votes for all other offices for which candidates have qualified to be on the election ballot must be used for the school board offices.

(e) If a vacancy in the board of school commissioners exists because of the death of a board member, the remaining members of the board shall meet and select an individual to fill the vacancy in accordance with subsection (b) after the secretary of the board receives notice of the death under IC 5-8-6.

SECTION 31. IC 20-5-3-3.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 3.5. (a) This section applies to a school corporation subject to section 3 of this chapter.**

(b) The definitions in IC 3-5-2 apply to this section.

(c) If a vacancy in a school board office exists because of the death of a school board member, the remaining members of the governing body shall meet and select an individual to fill the vacancy after the secretary of the governing body receives notice of the death under IC 5-8-6 and in accordance with section 3 of this chapter.

SECTION 32. IC 20-25-3-4, AS ADDED BY P.L.2-2005, SECTION 9, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4. (a) The board consists of seven (7) members. A member:**

- (1) must be elected on a nonpartisan basis in primary elections held in the county as specified in this section; and**
- (2) serves a four (4) year term.**

(b) Five (5) members shall be elected from the school board districts in which the members reside and two (2) members must be elected at large. Not more than two (2) of the members who serve on the board may reside in the same school board district.

(c) If a candidate runs for one (1) of the district positions on the board, only eligible voters residing in the candidate's district may vote for that candidate. If a person is a candidate for one (1) of the at-large positions, eligible voters from all the districts may vote for that candidate.

(d) If a candidate files to run for a position on the board, the candidate must specify whether the candidate is running for a district or an at-large position.

(e) A candidate who runs for a district or an at-large position wins if the candidate receives the greatest number of votes of all the candidates against whom the candidate runs.

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(f) Districts shall be established within the school city by the state board. The districts must be drawn on the basis of precinct lines, and as nearly as practicable, of equal population with the population of the largest district not to exceed the population of the smallest district by more than five percent (5%). District lines must not cross precinct lines. The state board shall establish:

(1) balloting procedures for the election under IC 3; and

(2) other procedures required to implement this section.

(g) A member of the board serves under section 3 of this chapter.

(h) **In accordance with subsection (k),** a vacancy in the board shall be filled temporarily by the board as soon as practicable after the vacancy occurs. The member chosen by the board to fill a vacancy holds office until the member's successor is elected and qualified. The successor shall be elected at the next regular school board election occurring after the date on which the vacancy occurs. The successor fills the vacancy for the remainder of the term.

(i) An individual elected to serve on the board begins the individual's term on July 1 of the year of the individual's election.

(j) Notwithstanding any law to the contrary, each voter must cast a vote for a school board candidate or school board candidates by voting system or paper ballot. However, the same method used to cast votes for all other offices for which candidates have qualified to be on the election ballot must be used for the board offices.

(k) If a vacancy in the board exists because of the death of a member, the remaining members of the board shall meet and select an individual to fill the vacancy in accordance with subsection (h) after the secretary of the board receives notice of the death under IC 5-8-6.

SECTION 33. IC 20-26-4-4.5 IS ADDED TO THE INDIANA CODE AS A NEW SECTION TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 4.5. (a) This section applies to a school corporation subject to section 4 of this chapter.**

(b) The definitions in IC 3-5-2 apply to this section.

(c) If a vacancy in a school board office exists because of the death of a school board member, the remaining members of the governing body shall meet and select an individual to fill the vacancy after the secretary of the governing body receives notice of the death under IC 5-8-6 and in accordance with section 4 of this chapter.

SECTION 34. IC 34-17-3-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: **Sec. 2. (a) If judgment is rendered in favor of a person who claims to be the person entitled to**

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hold the office:

- (1) that person shall proceed to exercise the functions of the office after the person has been qualified, as required by law; and
- (2) the court shall order the defendant to deliver all the funds and records in the custody or within the power of the defendant, belonging to the office from which the defendant has been removed:
 - (A) to the person entitled to hold the office; or
 - (B) if a vacancy results, to the court to hold until a person is selected **under subsection (b)** to fill the vacancy.

(b) This subsection applies whenever:

- (1) the court renders a judgment under subsection (a) that an individual holding a public office (as that term is used in IC 34-17-1-1) is not entitled to hold that office; and**
- (2) a vacancy occurs in that office as the result of the court's judgment.**

The court must file a certified copy of the judgment with the person who is entitled under IC 5-8-6 to receive notice of the death of an individual holding the public office. The person receiving the copy of the judgment must give notice of the judgment in the same manner as if the person had received a notice of the death of the officeholder under IC 5-8-6. The person required or permitted to fill the vacancy that results from a removal under this section must comply with IC 3-13 or IC 20, whichever applies, to fill the vacancy.

SECTION 35. IC 35-50-5-1.1 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE JULY 1, 2005]: Sec. 1.1. (a) Whenever a person is convicted of a misdemeanor under IC 35-44-1, the court may include in the sentence an order rendering the person incapable of holding a public office of trust or profit for a fixed period of not more than ten (10) years.

(b) If any officer of a governmental entity is convicted of a misdemeanor under IC 35-44-1, the court may enter an order removing the officer from office.

(c) This subsection applies whenever:

- (1) the court enters an order under this section that applies to a person who is an officer of a governmental entity (as defined in IC 35-41-1-12); and**
- (2) a vacancy occurs in the office held by the person as the result of the court's order.**

The court must file a certified copy of the order with the person who is entitled under IC 5-8-6 to receive notice of the death of an

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individual holding the office. The person receiving the copy of the order must give notice of the order in the same manner as if the person had received a notice of the death of the officeholder under IC 5-8-6. The person required or permitted to fill the vacancy that results from a removal under this section must comply with IC 3-13 or IC 20, whichever applies, to fill the vacancy.

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President of the Senate

President Pro Tempore

Speaker of the House of Representatives

Approved: _____

Governor of the State of Indiana

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SEA 179 — Concur

